

**327 IAC 2-1.3-7 Antidegradation demonstration and determination**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 7. (a) If the provisions listed in section 6 of this rule does not apply, the existing or proposed new discharger must submit an antidegradation demonstration to the commissioner in accordance with this section before applying for a facility construction permit pursuant to 327 IAC 3, if applicable, or for a new, renewed, or modified control document.**

**(b) All antidegradation demonstrations shall contain the following elements:**

**(1) An identification of all pollutants or pollutant parameters for which the antidegradation demonstration is required, including the mass and concentration proposed to be discharged and current and projected concentration in the receiving water.**

**(2) An identification and characterization of the water body(ies) affected by the new or increased discharge that addresses the physical, biological and chemical conditions of the water body.**

**(3) An identification of measures available to the existing or proposed discharger to minimize or prevent the proposed lowering of water quality. A separate analysis shall be performed for each pollutant or pollutant parameter for which there may be significant lowering of water quality. Each analysis shall include the following:**

**(A) Pollution prevention alternatives and techniques (including new and innovative technologies and the ways means to avoid the new discharge) available to the existing or proposed discharger that would minimize or prevent the proposed significant lowering of water quality, the effluent concentrations attainable by the alternatives and techniques, and their costs relative to the cost of treatment necessary to achieve applicable effluent limitations.**

**(B) Alternative or enhanced treatment techniques available to the existing or proposed discharger that would minimize or prevent the proposed significant lowering of water quality, the effluent concentrations attainable by the alternatives and enhanced treatment techniques, and their costs relative to the cost of treatment necessary to achieve applicable effluent limitations.**

**(C) This analysis shall include an evaluation of the feasibility and costs of connecting to an existing publicly or privately owned treatment works.**

**(D) For publicly owned treatment works (POTWs), if the proposed significant lowering of water quality is a result of a proposed new or increased discharge from one (1) or more indirect dischargers, the antidegradation demonstration shall also include the following:**

**(i) The requirements of clauses (A) and (B) shall be completed for the**

indirect discharger(s) as well as for the POTW. The POTW may require the indirect dischargers to prepare this information.

(ii) If one (1) or more of the indirect dischargers proposes or does discharge to a combined sewer (or to a sanitary sewer that is connected to a combined sewer), all combined sewer overflows (CSOs) between the point of discharge to the sewer and the POTW shall be identified.

(4) Documentation showing that the existing or proposed discharger has made a good faith effort to provide notice to all government or privately sponsored conservation projects that have specifically targeted improved water quality or enhanced recreational opportunities on the proposed receiving water body in the area of the new or increased discharge. The notice shall include a list of the parameters for which a significant lowering of water quality is proposed.

(5) An identification of the current concentration and projected concentration, if lowering is allowed, of any bioaccumulative chemicals of concern (BCCs) for which the antidegradation demonstration is being submitted.

~~(c) For dischargers that are not POTWs and for POTWs for which the proposed significant lowering of water quality is either a result of a proposed new or increased discharge from one (1) or more indirect dischargers, or has been determined by the commissioner to be necessary to accommodate important economic or social development in the area in which the surface waters are located;~~ The antidegradation demonstration shall also contain an analysis of the positive and negative social or economic development impacts to the area in which the receiving waters are located that will occur if the significant lowering of water quality is allowed. ~~The POTW may require the indirect dischargers to prepare this information. This analysis shall include the following:~~

(1) The important social, economic and environmental benefits to be realized through the project or activity if the water quality is lowered, including, as appropriate:

- (A) industrial, commercial or residential growth in the community;
- (B) changes in the number and types of jobs;
- (C) changes in the tax revenues generated;
- (D) the extent to which an environmental or public health problem is corrected; or
- (E) other social and economic benefits to the community

(2) The important social, economic and environmental benefits to be lost if water quality is lowered, such as lost or lowered recreational opportunities.

(d) In lieu of the information required by subsections (b) and (c), dischargers proposing:

- (1) a response action pursuant to CERCLA;

(2) a corrective action pursuant to RCRA; or  
(3) an action pursuant to similar federal or state authorities, including:  
    (A) an underground storage tank (UST) corrective action under IC 13-23-13;  
    (B) a remediation of petroleum releases under IC 13-24-1;  
    (C) a voluntary remediation under IC 13-25-5; or  
    (D) an abatement or correction of any polluted condition under IC 13-18-7;  
may submit information to the commissioner demonstrating that the action minimizes the proposed lowering of water quality and will use the most cost effective pollution prevention and treatment techniques available.

(e) Upon receipt of an antidegradation demonstration, the commissioner shall provide notice, request comment, and shall, if requested, schedule and hold a public meeting on the application in accordance with section 10 of this rule. The commissioner shall hold a public meeting on the application in accordance with section 10 if the proposed discharge is to an OSRW or a public meeting is requested by twenty-five (25) persons or more. The commissioner shall quantify the increased risk to human health due to new or increased discharges of BCCs. This information shall be available for inspection and copying as a public record before the public meeting is held.

(f) Once the commissioner determines that the information provided by the discharger proposing a new or increased discharge is administratively complete, the commissioner shall make an antidegradation determination in accordance with the following:

- (1) The commissioner shall consider the following:
  - (A) the magnitude of the proposed lowering of water quality;
  - (B) the anticipated impact of the proposed lowering of water quality on aquatic life and wildlife, including threatened and endangered species, important commercial or recreational sport fish species, other individual species and the overall aquatic community structure and function;
  - (C) the anticipated impact of the proposed lowering of water quality on human health and the overall quality and value of the water resource;
  - (D) The degree to which water quality may be lowered in waters located within national, state or local parks, preserves or wildlife areas, or OSRWs or ONRWs;
  - (E) the effects of lower water quality on the economic value of the water body for recreation, tourism and other commercial activities, aesthetics, or other use and enjoyment by humans;
  - (F) the extent to which the resources or characteristics adversely impacted by the lowered water quality are unique or rare within the locality or state;
  - (G) the cost of the water pollution controls associated with the proposed activity;
  - (H) the cost effectiveness and technical feasibility of the non-degradation alternatives, minimal degradation alternatives or mitigative technique

alternatives and the effluent reduction benefits and water quality benefits associated with such alternatives;

(I) the availability, cost effectiveness, and technical feasibility of central or regional sewage collection and treatment facilities, including long-range plans outlined in state or local water quality management planning documents and applicable facility planning documents;

(J) the availability, reliability and cost effectiveness of any non-degradation alternative, minimal degradation alternative or mitigative technique alternative;

(K) the reliability of the preferred alternative including, but not limited to, the possibility of recurring operational and maintenance difficulties that would lead to increased degradation;

(L) the condition of the local economy, the changes in the number and types of jobs, state and local tax revenue to be generated, and other economic and social factors as the commissioner deems appropriate;

(M) any action or recommendation relevant to the antidegradation demonstration made by a county, township, or municipality potentially affected by the new or increased loading; and

(N) any other information regarding the proposed activities and the affected water body that the commissioner deems appropriate.

(2) The commissioner shall deny the request to lower water quality if:

(A) cost-effective measures necessary to prevent or minimize the proposed lowering are reasonably available and the discharger has chosen not to implement these measures; or

(B) the action that would cause the lowering is not necessary to accommodate important economic or social development in the area.

(3) The commissioner may approve activities that lower water quality only if there has been an examination of non-degradation, minimal degradation and mitigative technique alternatives, a review of the social and economic issues related to the activity, a public participation process and appropriate intergovernmental coordination, and the commissioner determines that the lower water quality is necessary to accommodate important social or economic development in the area in which the water body is located.

**(3 4)** In no event may a permit be granted that would not meet the requirements of section 3.

(g) When the commissioner proposes an antidegradation determination, it shall be summarized in the public notice form and incorporated into the draft permit and the fact sheet that is made available for public comment under 327 IAC 5-3-9. A final antidegradation decision shall be incorporated into the final NPDES permit and fact sheet.  
(*Water Pollution Control Board; 327 IAC 2-1.3-7*)